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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/701,940	11/04/2003	Charles E. Heger	549242002200	7139

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MORRISON & FOERSTER LLP  
755 PAGE MILL RD  
PALO ALTO, CA 94304-1018

EXAMINER

GUADALUPE, YARITZA

ART UNIT PAPER NUMBER

2859

DATE MAILED: 08/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/701,940

Applicant(s)

HEGER ET AL.

Examiner

Yaritza Guadalupe McCall

Art Unit

2859



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6, 9-12, 15-17, 27-29, 32-38, 40-47, 50 and 52 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 9, 15-17, 27-29, 32-38, 40-47 and 52 is/are allowed.
- 6) ☒ Claim(s) 1-4, 10, 11 and 50 is/are rejected.
- 7) ☒ Claim(s) 5, 6 and 12 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

In response to Amendment filed June 3, 2005

Upon further consideration, the allowability of claims 10 and 11 is hereby withdrawn.

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1 – 4, 10, 11 and 50 are rejected under 35 U.S.C. 103( a ) as being unpatentable over Dong (US 5,864,956 ) in view of Seki ( US 6,430,823 ) and further in view of Claxton ( US 5,394,616 ).

In regards to claim 1, Dong discloses an apparatus having one or more light emitting modules detachable from each other, wherein each of the modules has at least two sides ( See Figures 2 and 3 ) that allows for substantially parallel positioning on the reference surface and allows substantially parallel positioning against a side of another light emitting modules, and

wherein each of the light emitting modules cooperating with the reference surface to provide oriented light.

Dong does not disclose the leveling platform and the modules being magnetically detachable as stated in claim 1. Dong does not disclose the self-leveling platform or manually-leveling platform as stated in claims 2 - 4.

With respect to the leveling platform of claims 1 - 4: Seki discloses a device comprising a leveling platform ( 4 ) providing a reference surface made substantially leveled, and one or more light emitting modules ( 9, 28 ) detachable from the leveling platform and having at least two sides for parallel positioning on the reference surface and coupling electrical power to the light emitting modules. Seki discloses said leveling platform being manually leveled in order to achieve maximum horizontal and vertical leveling adjustment against the installation surface (See Column 5, lines 1 – 11 ). Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to add a leveling platform as taught by Seki to the apparatus disclosed by Dong in order to achieve maximum horizontal and vertical leveling adjustment against the installation surface ( See Column 5, lines 1 – 11 ).

In regards to the magnetically detachable modules of claim 1 : Claxton discloses a laser positioning device being magnetically detachable by means of a magnetic material ( 63 ) being provided on one side in order to provide sufficient holding power to strongly attract and hold the device in place ( See Column 4, lines 10 – 16 ). Therefore, it would have been obvious to a

person having ordinary skill in the art at the time the invention was made top modify the light emitting modules disclosed by Dong by adding magnetic means on at least two sides of the housing as taught by Claxton in order to provide sufficient holding power to strongly attract and hold the device in place when stacked during the leveling process and prevent undesired movement that may affect the accuracy of the leveling. .

In regards to claim 2 : Dong, Seki and Claxton disclose an apparatus as stated above, having a manually adjustable and leveled platform. The use of the particular type of leveling support as claimed by applicant, i.e., self-leveling, absent any criticality, is considered to be nothing more than a choice of engineering skill, choice or design because 1) neither non-obvious nor unexpected results, i.e., results which are different in kind and not in degree from the results of the prior art, will be obtained as long as the support is accurately leveled during use, as already suggested by Seki, 2) the leveling support claimed by Applicant and the leveling support used by Seki are well known alternate types of leveling supports which will perform the same function, if one is replaced with the other, of accurately leveling the support during use, and 3) the use of the particular type of leveling support by Applicant is considered to be nothing more than the use of one of numerous and well known alternate types of leveling supports that a person having ordinary skill in the art would have been able to provide using routine experimentation in order to accurately level the support during use as already suggested by Seki.

With respect to claim 10, Dong, Seki and Claxton disclose a housing having a plurality of sides, an aperture defined in a first side of the sides (defined by the wall allowing the laser beam to be emitted ), and a magnetic fastener on each of at least two of the sides including the first side; and a light source ( laser diode 2 ) mounted within the housing; whereby the aperture allows light from the light source to pass from the housing, and wherein each magnetic fastener includes at least one magnet mounted on the respective side.

In regards to claim 11, Dong, Seki and Claxton teach a module comprising a housing having a plurality of sides, an aperture defined in a first side of the sides, and a magnetic fastener on each of at least two of the sides including the first side; and a light source ( 2 ) mounted within the housing, whereby the aperture allows light from the light source to pass from the housing; and wherein a magnetic fastener on the first side having the aperture includes one magnet mounted on the first side.

Regarding claim 50, Dong, Seki and Claxton disclose a housing having a plurality of sides, an aperture defined in a first of the sides, and a magnetic fastener on at least a second of the sides, the magnetic fastener including at least one magnet mounted for rotation on the second of the sides; and a light source ( 2 ) mounted within the housing, whereby the aperture allows light from the light source to pass from the housing, wherein the magnetic fastener includes two magnets.

With respect to the intended uses as stated in claims 1, 10, 11 and 50 : It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *In re Schreiber*, 44 USPQ2d 1429 ( Fed. Cir. 1997 ).

***Allowable Subject Matter***

3. Claims 5, 6 and 12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
4. Claims 9, 15 – 17, 27 – 29, 32 – 38, 40 – 47 and 52 are allowed.

***Response to Arguments***

5. Applicant's arguments with respect to claims 1 - 4 have been considered but are moot in view of the new ground(s) of rejection.

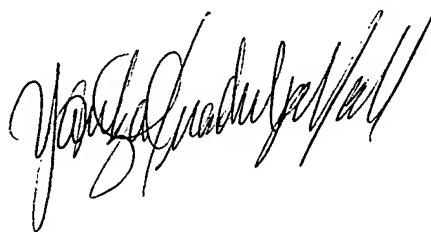
*Conclusion*

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yaritza Guadalupe whose telephone number is (571)272 -2244.

The examiner can normally be reached on 9:00 AM - 6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F.F. Gutierrez can be reached on (571) 272-2245. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Yaritza Guadalupe-McCall', is positioned above the printed name.

Yaritza Guadalupe-McCall  
Patent Examiner  
Art Unit 2859

YGM  
August 11, 2005